S T A T E O F N E W Y O R K

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2015-2016 Regular Sessions

I N S E N A T E

June 14, 2015

Introduced by Sen. VENDITTO -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to authorizing the secretary of state to order the cessation of unlicensed appearance enhancement activity and to register trainees in the practice of nail specialty

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 400 of the general business law is amended by adding a new subdivision 11 to read as follows:

11. "TRAINEE" MEANS A PERSON PURSUING IN GOOD FAITH A COURSE OF STUDY IN THE PRACTICE OF NAIL SPECIALTY UNDER THE TUTELAGE, SUPERVISION AND DIRECTION OF A LICENSED NAIL PRACTITIONER. SUCH TRAINEE SHALL BE EMPLOYED BY A LICENSED APPEARANCE ENHANCEMENT BUSINESS.

S 2. Subdivision 1 of section 401 of the general business law, as amended by chapter 341 of the laws of 1998, is amended to read as follows:

1. No person shall engage in the practice of nail specialty, waxing, natural hair styling, esthetics or cosmetology, as defined in section four hundred of this article, without having received a license to engage in such practice in the manner prescribed in this article. NO PERSON SHALL ACT AS A TRAINEE OR PERFORM ANY SERVICE AS SUCH UNLESS HE OR SHE HAS OBTAINED A CERTIFICATE OF REGISTRATION PURSUANT TO THIS ARTICLE.

S 3. Section 404 of the general business law, as amended by chapter 341 of the laws of 1998, is amended to read as follows:

S 404. Rules and regulations. The secretary shall promulgate rules and regulations which establish standards for practice and operation by licensees AND TRAINEES under this article in order to ensure the health, safety and welfare of the public INCLUDING LICENSEES AND TRAINEES WHEN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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THEY ARE WORKING WITHIN SUCH ESTABLISHMENTS. Such rules and regulations shall include, but not be limited to, the sanitary conditions and procedures required to be maintained, a minimum standard of training appropriate to the duties of nail specialists, TRAINEES, waxers, natural hair stylists, estheticians, and cosmetologists and the provision of service by nail specialists, TRAINEES, waxers, natural hair stylists, estheticians or cosmetologists at remote locations other than the licensee's home provided that such practitioner holds an appearance enhancement business license to operate at a fixed location or is employed by the holder of an appearance enhancement business license. Regulations setting forth the educational requirements for nail specialists AND TRAINEES shall include education in the area of causes of infection and bacteriology. In promulgating such rules and regulations the secretary shall consult with the state education department, the advisory committee established pursuant to this article, any other state agencies and private industry representatives as may be appropriate in determining minimum training requirements.

S 4. Section 404-b of the general business law, as added by chapter 489 of the laws of 2010, is amended to read as follows:

S 404-b. Nail specialty; owner responsibilities. In addition to any rules and regulations establishing standards for practices and operations by licensees under this article, in order to ensure the health, safety and welfare within appearance enhancement businesses, all owners and operators of appearance enhancement businesses which practice nail specialty shall make available[, upon request] FOR USE, gloves and facemasks for nail speciality licensees AND TRAINEES who work in such businesses. [No owner or operator of any appearance enhancement business that engages in the practice of nail speciality shall prohibit any licensee practicing nail specialty from wearing a mask or gloves while engaged in the practice of nail specialty at such business.]

S 5. Subdivision 1 of section 406 of the general business law is amended by adding a new paragraph f to read as follows:

F. NOTWITHSTANDING THE EDUCATIONAL REQUIREMENTS OF THIS SECTION, A TRAINEE MAY OBTAIN A LICENSE TO PRACTICE NAIL SPECIALTY IF SUCH TRAINEE PROVIDES SATISFACTORY EVIDENCE TO THE SECRETARY THAT SUCH TRAINEE HAS BEEN ACTIVELY ENGAGED IN A TRAINEESHIP FOR A PERIOD OF ONE YEAR AND HAS COMPLETED A COURSE OF STUDY SET FORTH BY THE SECRETARY. SUCH COURSE OF STUDY MAY BE DELIVERED BY ELECTRONIC MEANS.

S 6. The general business law is amended by adding a new section 408-a to read as follows:

S 408-A. TRAINEE. 1. EACH APPLICANT FOR A CERTIFICATE OF REGISTRATION AS A TRAINEE SHALL MAKE AN APPLICATION WHICH SHALL INCLUDE THE PHYSICIAN'S CERTIFICATE REQUIRED BY PARAGRAPH E OF SUBDIVISION ONE OF SECTION FOUR HUNDRED SIX OF THIS ARTICLE, TWO RECENT PHOTOGRAPHS, AND SUCH OTHER INFORMATION REQUIRED BY SUCH SECTION AND IN SUCH FORM AS THE SECRETARY MAY PRESCRIBE.

2. A CERTIFICATE OF REGISTRATION AS A TRAINEE SHALL BE FOR A PERIOD OF ONE YEAR, RENEWABLE FOR A SECOND YEAR, AND MAY BE RENEWED FOR ADDITIONAL TERMS WITHIN THE DISCRETION OF THE SECRETARY.

3. EACH CERTIFICATE OF REGISTRATION ISSUED AS PROVIDED IN THIS SECTION SHALL BE POSTED IN A CONSPICUOUS PLACE IN THE APPEARANCE ENHANCEMENT BUSINESS IN WHICH THE TRAINEE IS ACTUALLY ENGAGED IN THE PRACTICE OF NAIL SPECIALTY AS A TRAINEE.

4. THE HOLDER OF A CERTIFICATE OF REGISTRATION AS A TRAINEE SHALL NOT BE ENTITLED TO AN APPEARANCE ENHANCEMENT BUSINESS LICENSE.

S 7. Subdivisions 3, 4, 5, 6 and 7 of section 409 of the general business law are renumbered subdivisions 4, 5, 6, 7 and 8, and a new subdivision 3 is added to read as follows:

3. UPON A DETERMINATION THAT IT IS IN THE BEST PUBLIC INTEREST TO DO SO, THE SECRETARY MAY PROMULGATE RULES IMPOSING FEES NOT TO EXCEED TWENTY DOLLARS FOR THE REGISTRATION AND RENEWAL OF THE REGISTRATION OF A TRAINEE.

S 8. Subdivision 1 of section 410 of the general business law, as added by chapter 509 of the laws of the 1992, is amended to read as follows:

1. Suspension and revocation of licenses OR REGISTRATIONS; fines; reprimands. A license OR REGISTRATION issued pursuant to this article may be suspended or revoked, or a fine not exceeding five hundred dollars payable to the department may be imposed for any one or more of the following causes:

a. Fraud or bribery in securing a license OR REGISTRATION or permission to take an examination therefor.

b. The making of any false statement as to a material matter in any application or other statement or certificate required by or pursuant to this article.

c. Incompetence or untrustworthiness.

d. Failure to display the license OR REGISTRATION as provided in this article.

e. Violation of any provision of this article, or of any rule or regulation adopted hereunder.

f. Conviction of any of the following crimes subsequent to the issuance of a license OR REGISTRATION pursuant to this article: fraud pursuant to sections 170.10, 170.15, 176.15, 176.20, 176.25, 176.30 and 190.65; falsifying business records pursuant to section 175.10; grand larceny pursuant to article 155; bribery pursuant to sections 180.03, 180.08, 180.15, 180.25, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.45, 200.50; perjury pursuant to sections 210.10, 210.15, 210.40; assault pursuant to sections 120.05, 120.10, 120.11, 120.12; robbery pursuant to article 160; homicide pursuant to sections 125.25 and 125.27; manslaughter pursuant to sections 125.15 and 125.20; kidnapping and unlawful imprisonment pursuant to sections 135.10, 135.20 and 135.25; unlawful weapons possession pursuant to sections 265.02, 265.03 and 265.04; criminal use of a weapon pursuant to sections 265.08 and 265.09; criminal sale of a weapon pursuant to sections 265.11 and 265.12; COMPELLING PROSTITUTION PURSUANT TO SECTION 230.33; SEX TRAFFICKING PURSUANT TO SECTION 230.34; and sex offenses pursuant to article 130 of the penal law. Provided, however, that for the purposes of this article, none of the following shall be considered criminal convictions or reported as such: (i) a conviction for which an executive pardon has been issued pursuant to the executive law; (ii) a conviction which has been vacated and replaced by a youthful offender finding pursuant to article seven hundred twenty of the criminal procedure law, or the applicable provisions of law of any other jurisdiction; or (iii) a conviction the records of which have been expunged or sealed pursuant to the applicable provisions of the laws of this state or of any other jurisdiction; and (iv) a conviction for which other evidence of successful rehabilitation to remove the disability has been issued.

Provided, however, a fine shall not be imposed for the causes specified in paragraph f of this subdivision.

In lieu of or in conjunction with the suspension or revocation of a license OR REGISTRATION, or the imposition of a fine pursuant to this

section, the secretary may issue a reprimand. When a license OR REGISTRATION issued pursuant to this article is revoked, such license OR REGISTRATION shall not be reinstated or reissued until after the expiration of a period of one year from the date of such revocation. No license OR REGISTRATION shall be issued after a second revocation.

S 9. Subdivision 2 of section 410 of the general business law, as amended by chapter 324 of the laws of the 1998, is amended to read as follows:

2. Unlicensed activities. a. The secretary may issue an order directing the cessation of any activity RELATED TO NAIL SPECIALTY, WAXING, NATURAL HAIR STYLING, ESTHETICS OR COSMETOLOGY for which a license is required by this article upon a determination that a person, [including a] partnership, [a] limited liability company or BUSINESS corporation, [has engaged] ENGAGING in [or followed] the business or occupation of, or [held] HOLDING himself, HERSELF or itself out as or acted, temporarily or otherwise, as a nail specialist, natural hair stylist, esthetician[,] OR cosmetologist [or appearance enhancement business] within this state without a valid license being in effect. The [department] SECRETARY shall, before making such determination and order, afford such person, partnership, limited liability company or BUSINESS corporation an opportunity to be heard in person or by counsel in reference thereto in an adjudicatory proceeding held pursuant to [this article] SECTION FOUR HUNDRED ELEVEN OF THIS ARTICLE AS APPLICABLE.

b. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, IF THE SECRETARY FINDS THAT A PERSON, PARTNERSHIP, LIMITED LIABILITY COMPANY OR BUSINESS CORPORATION, IS HOLDING HIMSELF, HERSELF OR ITSELF OUT AS OR IS ACTING AS, TEMPORARILY OR OTHERWISE, AN APPEARANCE ENHANCEMENT BUSINESS WITHIN THIS STATE WITHOUT A VALID LICENSE, THE SECRETARY SHALL PROVIDE THE PERSON, PARTNERSHIP, LIMITED LIABILITY COMPANY OR BUSINESS CORPORATION WITH A WRITTEN NOTICE OF VIOLATION AND COMPLAINT, AND SHALL AFFORD AN OPPORTUNITY TO BE HEARD, EITHER IN PERSON OR BY COUNSEL, BEFORE AN ADMINISTRATIVE LAW JUDGE NO SOONER THAN THREE DAYS FROM DELIVERY OF SUCH NOTICE OF VIOLATION. IF DOCUMENTARY PROOF THAT THE DEFICIENCY HAS BEEN CURED IS NOT PROVIDED TO THE SECRETARY AT OR BEFORE SUCH HEARING, FOLLOWING A HEARING DETERMINATION THAT UNLICENSED ACTIVITIES HAVE OCCURRED, THE SECRETARY MAY ISSUE AN IMMEDIATE ORDER DIRECTING THE CESSATION OF ANY ACTIVITY FOR WHICH AN APPEARANCE ENHANCEMENT LICENSE IS REQUIRED.

C. THE SECRETARY MAY ISSUE AN ORDER DIRECTING THE CESSATION OF ANY ACTIVITY IF THE SECRETARY FINDS THAT A PERSON, INCLUDING A PARTNERSHIP, A LIMITED LIABILITY COMPANY OR BUSINESS CORPORATION, IS HOLDING HIMSELF, HERSELF OR ITSELF OUT AS OR IS ACTING AS, TEMPORARILY OR OTHERWISE, AN APPEARANCE ENHANCEMENT BUSINESS WITHIN THE STATE WITHOUT A (I) BOND OR (II) LIABILITY INSURANCE OR LIABILITY COVERAGE WHICH IS COVERED THROUGH A BOND. THE SECRETARY SHALL, BEFORE MAKING SUCH DETERMINATION AND ORDER, AFFORD SUCH PERSON, PARTNERSHIP, LIMITED LIABILITY COMPANY OR BUSINESS CORPORATION AN OPPORTUNITY TO BE HEARD IN PERSON OR BY COUNSEL IN REFERENCE THERETO IN AN ADJUDICATORY PROCEEDING HELD PURSUANT TO SECTION FOUR HUNDRED ELEVEN OF THIS ARTICLE. THE ENFORCEMENT OF THIS PROVISION SHALL REQUIRE THE DEPARTMENT OF FINANCIAL SERVICES TO CERTIFY IN WRITING TO THE SECRETARY THAT ANY BONDS OR LIABILITY INSURANCE THAT IS REQUIRED BY THE DEPARTMENT IS READILY AVAILABLE TO APPEARANCE ENHANCEMENT BUSINESSES FROM THE MARKET PLACE.

D. The attorney general, acting on behalf of the secretary, may commence an action or proceeding in a court of competent jurisdiction to obtain a judgment against such person, partnership, limited liability

company or BUSINESS corporation in an amount equal to that assessed as a civil penalty. Said judgment shall thereafter be enforceable by any means authorized by the civil practice law and rules.

E. WHERE AN APPEARANCE ENHANCEMENT BUSINESS OPERATOR CONTINUES TO OPERATE WITHOUT A LICENSE FOLLOWING THE ISSUANCE OF AN ORDER BY THE SECRETARY DIRECTING CESSATION, THE ATTORNEY GENERAL, ACTING ON BEHALF OF THE SECRETARY, MAY COMMENCE AN ACTION OR PROCEEDING IN A COURT OF COMPETENT JURISDICTION AGAINST SUCH OPERATOR TO OBTAIN AN ORDER ENJOINING FURTHER OPERATION OF SUCH BUSINESS. AN APPEARANCE ENHANCEMENT BUSINESS THAT HAS BEEN ORDERED TO CEASE OPERATION SHALL NOT RE-OPEN WITHOUT FIRST OBTAINING A LICENSE AS REQUIRED BY THIS ARTICLE AND PAYING ANY ASSESSED FINES.

S 10. Subdivisions 1 and 2 of section 411 of the general business law, subdivision 1 as added by chapter 509 of the laws of 1992, and subdivision 2 as amended by chapter 134 of the laws of the 2000, are amended to read as follows:

1. Denial of license OR REGISTRATION. The department shall, before making a final determination to deny an application for a license OR REGISTRATION, notify the applicant in writing of the reasons for such proposed denial and shall afford the applicant an opportunity to be heard in person or by counsel prior to denial of the application. Such notification shall be served personally or by certified mail or in any manner authorized by the civil practice law and rules for service of a summons. If a hearing is requested, such hearing shall be held at such time and place as the department shall prescribe. If the applicant fails to make a written request for a hearing within thirty days after receipt of such notification, then the notification of denial shall become the final determination of the department. The department, acting by such officer or person in the department as the secretary may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules. If, after such hearing, the application is denied, written notice of such denial shall be served upon the applicant personally or by certified mail or in any manner authorized by the civil practice law and rules for the service of a summons.

2. Revocation, suspension, reprimands, fines; unlicensed activities. The department shall, before revoking or suspending any license OR REGISTRATION or imposing any fine or reprimand on the holder thereof, or before issuing any order directing the cessation of unlicensed activities, and at least ten days prior to the date set for the hearing, notify in writing the holder of such license OR REGISTRATION, or the person alleged to have engaged in unlicensed OR UNREGISTERED activities, of any charges made and shall afford such person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the licensee OR REGISTRANT or person charged, or by mailing same by certified mail to the last known business or other address provided by such person to the secretary of state, or by any method authorized by the civil practice law and rules for the service of a summons. The hearing on such charges shall be at such time and place as the department shall prescribe.

S 11. Section 412 of the general business law, as amended by chapter 341 of the laws of 1998, is amended to read as follows:

S 412. [Civil penalties] PENALTIES. 1. The practice of nail specialty, waxing, natural hair styling, esthetics or cosmetology[, or the

operation of an appearance enhancement business] without a license or while under suspension or revocation, or in violation of an order directing the cessation of unlicensed activity issued by the secretary pursuant to section FOUR HUNDRED TEN OR four hundred eleven of this article, is a violation and is subject to a civil penalty of up to five hundred dollars for the first violation; one thousand dollars for a second such violation; and two thousand five hundred dollars for a third violation and any subsequent violation.

2. THE FOLLOWING VIOLATIONS SHALL BE DEEMED SEPARATE OFFENSES AND BE DEEMED A MISDEMEANOR, AND UPON CONVICTION, SHALL BE PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY A FINE OF UP TO TWO THOUSAND FIVE HUNDRED DOLLARS OR BY BOTH SUCH FINE AND IMPRISONMENT:

(A) THE OPERATION OF AN APPEARANCE ENHANCEMENT BUSINESS WITHOUT A LICENSE OR WHEN SUCH LICENSE HAS BEEN SUSPENDED OR REVOKED; OR

(B) THE OPERATION OF AN APPEARANCE ENHANCEMENT BUSINESS IN VIOLATION OF AN ORDER DIRECTING THE CESSATION OF UNLICENSED ACTIVITY ISSUED BY THE SECRETARY PURSUANT TO SECTION FOUR HUNDRED TEN OF THIS ARTICLE.

3. THE OPERATION OF AN APPEARANCE ENHANCEMENT BUSINESS WITHOUT A (A) BOND OR (B) LIABILITY INSURANCE OR LIABILITY COVERAGE WHICH IS COVERED THROUGH A BOND SHALL BE PUNISHABLE BY A CIVIL PENALTY OF UP TO TWO THOUSAND FIVE HUNDRED DOLLARS. THE ENFORCEMENT OF THIS PROVISION SHALL REQUIRE THE DEPARTMENT OF FINANCIAL SERVICES TO CERTIFY IN WRITING TO THE SECRETARY THAT ANY BONDS OR LIABILITY INSURANCE THAT IS REQUIRED BY THE DEPARTMENT IS READILY AVAILABLE TO APPEARANCE ENHANCEMENT BUSINESSES FROM THE MARKET PLACE.

S 12. This act shall take effect immediately; provided, however that the provisions set forth in paragraph (c) of subdivision 2 of section 410 of the general business law as added by section nine of this act and subdivision 3 of section 412 of the general business law as added by section eleven of this act shall take effect on the sixtieth day after the department of financial services has certified in writing to the secretary of state that any bonds or liability insurance that is required by the department of state is readily available to the businesses from the market place.